

## UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,578	12/14/2001	Stephen M. Brinkman	B-0114.07	6140
7	7590 10/04/2002			
LAW OFFICES OF CHRISTOPHER L. MAKAY 1634 Milam Building 115 East Travis Street			EXAMINER	
			HAYES, BRET C	
San Antonio, T	TX 78205		ART UNIT PAPER NUMBER	
			3644	
			DATE MAILED: 10/04/2002	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Examiner		Application No.	Applicant(s)				
Bret C Hayes    Status		10/017,578	BRINKMAN, STEPHEN M.				
- The MALLING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the provisions of 37 CPR 1.136(a). In no event, however, may a reply be timely fleat the period for may be produced above its use them after 37 CPR 1.136(a). In no event, however, may a reply to timely fleat them and them are the period for reply specified above its use them thing (30) days, and power of them and them are them and them are them them and them and them are them and them and them and them are them and t	Office Action Summary	Examiner	Art Unit				
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3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6) Other:	1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Informal P					

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#### **DETAILED ACTION**

## Drawings

1. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

# Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101, which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 1 – 38 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 27 of copending Application Nos. 09/819,584 which is a CIP of 09/745,235. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim modifications that would be obvious to one having ordinary skill in the art at the time the invention was made. In this case, claims 1 and 2 would involve the removal of the decapod-shaped lure comprising a body and a tail; claim 12 would involve the slot of the earlier disclosure of Application No. 09/745,235; claims 25, 30 and 37 would require no changing; claim 33 would require the addition of a barb guard as disclosed in Application No. 09/745,235, Figs. 1, 2 and 6 – 11.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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### Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306-0553. The examiner can normally be reached Monday through Friday from 7:00 am to 4:30 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306-4159. The fax number for this group is (703) 305-7687.

CHARLES T. JORDAN SUPERVISORY PATENT EXAMINER

TECHNOLOGY CENTER 3600

bh

9/27/02